

**Minutes for the State of North Carolina  
Forensic Science Advisory Board Meeting  
(NCFSAB)**

Meeting – September 22, 2015  
North Carolina State Crime Laboratory  
Raleigh, NC

**Board members present:** North Carolina State Crime Laboratory Director John Byrd, Kermit Channell (Chair), Adam Becnel, Michael Coble, Tracey Dawson Cruz, Demi Garvin, David Hinks, Mike Jiroutek, Amanda Julian, Tim Kupferschmid, Alka Lohmann, Peter Marone, Christopher Palenik, Bethany Pridgen, Deborah Radisch, Ronald Singer (via telephone)

**Board members not present:** None

**Others in attendance:** Suzi Barker, Mark Boodee, John Dilday, Ann Hamlin, Judge Joe John, Deena Koontz, Karen Morrow, Elizabeth Patel, Joe Reavis (via telephone), Timothy Suggs, Amanda Thompson, Pete Ware, Jody West (SCL); Stormie Forte (SCL Ombudsman); Christine Mumma (NC Center on Actual Innocence); John Bason, Forensic Science Advisory Board Counsel Matthew Boyatt, North Carolina State Crime Lab Counsel William Hart (NC DOJ)

Meeting called to order by Chairman Kermit Channell at 8:35 AM. Board members Channell, Hinks, Singer, Palenik, and Julian, reappointed to serve another term, sworn in by Judge Joe John. **Minutes** from previous meeting (April 21, 2015) approved as amended.

Lab Director Byrd began **Director's Report**.

Of NC's 50 Judicial Districts, 24 have signed "School of Government Crime Lab Working Group Memorandum of Agreement" (**MOA**); another 13 in the process. Resistance in some of the remaining 13. NC Conference of DA's declined to push DA's to voluntarily adopt it. SCL pursuing other courses to get MOA in place. Overall, seeing positive impact from increased communication surrounding MOA. Up to Chief Justice to decide whether to make it a requirement of all the judicial districts.

MOA has 17 recommendations to help the lab create efficiencies within the court system. Example: scientist who arrives at court links up with representative of DA's office; prosecution, defense and judge are notified, to assist in getting scientist on and off of the stand with minimal waiting.

Board Q: Are you planning to use meetings and conferences to make prosecutors and judges aware that DNA stats will be changing RE: numerical odds of a sample (being from/not being from) a defendant or individual? You need to prepare them for the change. A: We will do that. Will discuss with board members who have already done it in their localities.

Director unveiled slightly revamped **organizational strategy**, to help agency understand its strategic direction. Two new goals added to previous 6: "Invest in our employees to create belonging and loyalty to both our employees and the crime laboratory" and "Identify and acquire adequate fiscal resources for the laboratory."

Director reported SCL **budget insufficient** to purchase scientific supplies needed as DNA production increases, and costs also increase in other disciplines. Already experiencing shortages, looking for ways to save money. Recommends board meeting face-to-face at the lab once a year instead of twice, with other meeting taking place electronically. Costs SCL about \$13,000 to hold each “onsite” meeting.

Board member Ron Singer, participating via phone, suggested that audio equipment needs upgrade to better facilitate electronic meetings. Director noted new equipment is purchased, to be installed soon.

Regarding Director’s SMART Objectives (specific, measurable, attainable, relevant and time-bound steps through which the SCL achieves its goals), noted that two objectives have been achieved and third (identifying 2 new grant sources) is underway. Governor’s Crime Commission (GCC) approached SCL about applying for 2 grants. Both were accepted, funds (originally from federal government) arrive next year. Smaller grant dedicated to DNA training, an immediate need. Larger grant for equipment in Toxicology, to assist in automation of instrumentation.

**Vacancies** are down to 18. (When FSAB met last year, 30.) Training programs range from 9 months to 2 years depending on discipline. Trainees coming online, reducing case inventory and turnaround time. Salary Adjustment Fund, just approved by General Assembly, will help reduce vacancies. Attrition has been over 52% since 2010 but is slowing down.

“Rush” program is working. Recently, DWI/triple homicide: Toxicology Staff performed blood drug and blood alcohol analysis in 3 weeks, very rare at SCL. In another case, DNA and body fluid done in 9 days.

Drug chemistry and toxicology now make up 92% of caseload in the building. Forensic biology is 5%.

Q: RE: **reducing backlog** by 50% - How do you measure, how far back do your stats go? A: January 2014, when they started to see the big changes. They were at 52,000+ cases at that time. They are at just over 30,000 now. Seeing numbers in some disciplines now that they haven’t seen since 2002-2003.

Q: RE: **sexual assault kits** - Any new legislation/changes? A: (Legislative Liaison Christy Agner) First thanked FSAB for letters written to legislators about the Salary Adjustment Fund; letters came across as credible/unbiased because they were not from DOJ or SCL. RE: sexual assault kits - no legislation this year, maybe next year. Trying to be transparent about the issue, which has been in the news.

Director: Fayetteville NC PD started sex assault cold case unit, found that 300 kits had been destroyed over the years. (SCL currently has 15 SA cases from Fayetteville. One from recent case, others much older. Working with cold case unit on 2 of them.) Board member: Disposal of untested kits sparked action on preservation of biological evidence in South Carolina. Director: SCL will need additional resources if they are asked to test more kits. (No statute of limitations on sexual assault cases in NC.)

SCL personnel once served as **auditors** at other labs, but stopped to focus on internal quality improvements. Now, SCL trying to get its managers into five outside labs in 2016 due to benefits of looking at other labs, and bringing information/best practices “home.” (DNA managers continued to do audits when other sections stopped; are also participating in The Potomac Group.)

Three year waiting period before firearm and tool mark examiners can get Association of Firearms and Tool Mark Examiners (**AFTE**) **certification** means employees are working cases for three years before they’re even eligible for that certification. Eight currently working cases, only one certified. In other

sections of SCL, most all employees are already certified in their areas. SCL is considering transitioning its firearm and tool mark examiners over to American Board of Criminalistics (ABC) certification while they accumulate the time needed to be certified by AFTE.

Statute: No requirement for certification while working cases; get certified when eligible. But "it's hanging over their heads and this (ABC certification) is a way to get them out from underneath that."  
Board member Singer: Major issue, needs to be addressed. Getting them more training would also help. ABC's general exam is good but not as focused on firearm and tool mark as AFTE.

Director asked for board's help in identifying one **research topic** to advance one discipline during 2016.

Continuing work of Retention Committee: at least one event per month conducted in 2016 to help keep employees at SCL.

**Stop Work program** is big step forward in making lab more efficient. SCL makes a list of pending cases in their system each quarter, for each prosecutorial district. List emailed to DA's office; they review and tell SCL which cases no longer need to be worked. Stop Work orders are handed off to individual managers and are pulled manually. Biggest impact has been in drug chemistry. Large investment of time to get system up and running/keep it running, but has brought a great return.

**Outsourcing** of blood drug cases and blood-alcohol analysis to hospitals and labs: designed to be temporary measure until SCL can keep up. Not there yet, but getting close. Very few counties are outsourcing. Large counties work their own cases or contract with regional labs.

Still working on the **video testimony** project, started under Judge John. Legislation passed two years ago to allow video testimony. SCL identified a county that already does first appearances with video testimony. Working with that county's equipment and their vendor, making SCL's equipment and DOJ's equipment "talk to" the equipment at that county. System tested a couple of times. Making sure there are no stutters or delays in transmission. Meeting with stakeholders, other groups to get their buy-in.

Stumbling block is money. Getting everything lined up so Administrative Office of the Courts (AOC) can go to the General Assembly and ask for funding. No intention to try to equip every court room, focus on high-volume and go there. SCL, Triad Lab and Western Lab would all need facilities on their ends. It's a question of working out how much money it will take to equip the high-volume courtrooms.

Board member: From experience in their locality, it's unnatural for analyst to stare into camera to testify and not be able to see responses from jury. Suggests it be tested like a moot court. If there's an analyst who might not like it or adapt well, give them an opportunity to test it. Equipment may work, make sure analyst will work too.

Working with the National Guard Cyber Protection Team, helping them learn when they need to call in for help from SCL when they are doing forensics.

Chairman Channel question: Is SCL affiliated with Internet Crimes Against Children (**ICAC**) task force? A: Yes. NC ICAC is headed up by State Bureau of Investigation (SBI). When the SBI and SCL split, SCL lost the connection to ICAC. Specific statutory language had to be drawn to get SCL back in. Good working relationship with SBI. Funding is flowing down, just got two new forensic towers, about \$20,000 worth.

If a veteran is hired, **Hero Grant** money can be used to train them. Vet hiring program is directly tied to digital evidence training. Grant pays for their training, and more. One vet currently in the pipeline; hoping he will eventually be hired at SCL.

Updated version of **Forensic Advantage** coming with new features including graphical interface that looks more like new versions of Microsoft Office. Will provide notification of pending reviews, and when review of an analysts work is done. Changes worksheets, now they can make modifications. Also includes an automatic subpoena notification function. Replaces current system where they are faxed in and manually entered into Forensic Advantage. Eventually, will be able to tag evidence with radiofrequency identification tags (RFID). Will assist greatly in reconciling the vault. Inventory now takes a week, but could be done in an hour or two with a scanner. Version 15.0 of Forensic Advantage being tested in lab now, should be online sometime in October.

Results from annual customer feedback **survey** in, working group is still sorting through them. 107 responses from DAs, defense attorneys, law enforcement, others.

Working to improve and increase information coming out of SCL. **Letters** go to 1500 people at a time including the DAs, sheriff's offices, police departments, AOC, and clerks of court and School of Government so judges get it. Responses very positive. With General Assembly session now completed, will send new letter RE: impact of legislation on SCL.

SCL drafted white paper RE: going to single **lab accreditation** agency instead of staying with two. Presented it to the AG's Chief of Staff and chief policy adviser. SCL's recommendation was to go to one, based primarily on cost. White paper is now under consideration, follow-up meeting will take place soon to answer AG's questions. AG's Office knows that the billing cycle for accreditation starts in January.

Chairman Channel noted that if the board has a strong opinion one way or the other, it should send recommendations to the AG's office just as it did sending recommendations to the legislature.

The board recessed for break at 9:58.

Meeting resumed at 10:17. Board members received "Key Numbers" document containing contact information, and a separate list of board members' terms.

Director updated board on current actions and future events planned by Retention Committee which is working to improve morale and esprit de corps for employees.

SCL hosted a forensic science week last week and held events each day including an Open House. Director did multiple media interviews in conjunction with event. Managers and supervisors pitched in to cover costs of the events.

#### **Legislative update:**

Governor signed budget Friday. While all state employees received a one-time \$750 bonus, budget contained long-awaited market based **salary adjustment for forensic scientists**. Judge John first requested this 3.5 years ago. Many hours have been spent since then, by many people, to bring it to fruition.

Retroactive to July 1. Good retention tool to use with scientists who were considering changing jobs. Keep some people who might've otherwise left.

No rules yet established RE: how money is divided up. Was originally intended for Forensic Scientist I, II, III, supervisors and managers. State Office of Human Resources will be involved in process of deciding distribution. SCL Director will fight to include trainees and some others. "Hard to catch up if we don't take care of everybody on the front end." No money there for assistant directors, deputy directors or directors but there needs to be consideration for those as well.

Board question: Will be across the board or will other things will be taken into consideration, particularly to address currently existing inequalities? Director acknowledged inequalities, noted that managers need to be recognized for their additional duties. Some are young; there needs to be some separation between them and those they supervise.

Board member: If you address salary compression among management level but not admin staff, you have created another problem.

Board question: Is money is recurring? Will you be held to what you've done in the past (RE: distribution) or will you have the ability to do something different the second year and going forward?  
A: Money will be recurring for each who received it starting the first year. If there's any excess SCL will have some input on how that is spent. Lots of moving pieces, no rules yet on how it's going to work.

RE: Outsourcing funds for forensic analysis, got 750,000 this year, nonrecurring.

New law requires **DNA samples** from arrestees for 34 or 35 new felonies. Have projections of impact but won't know exact impact until samples come through the door for a year or so. Also includes money for necessary additional supplies. DNA section gets for new positions to help handle the increase.

Information Processing Techs were reclassified to CJ Specialist Investigator I.

The budget also contains **study** on collection of DNA samples for **all felonies**. Bill requiring it was deemed too expensive. SCL has already done a study, will update and submit it next year. Collecting for all felonies would likely require a new wing on the building. Currently processing approx. 30,000 samples/year. If it was all felonies, approx. 90,000/year.

Waiving of **court fees** has led to funding problems for some positions. Three positions are currently frozen due to the decreasing funds, all in DNA and database. AOC was not able to say how many waivers were being granted so the budget calls for an annual report on that. SCL stays neutral except to say SCL depends on those dollars and they are decreasing.

Budget also includes \$500,000 for the DA's to establish a grant fund to get **toxicology analysis** from local hospitals and other providers. Previous budget also had \$500,000 of which only \$22,000 was spent. SCL has existing contract with NMS Labs for toxicology. SCL working with the Conference of DA's and General Assembly (GA) Fiscal Staff to use \$500,000 line item to get toxicology work done there. Budgetary language was changed to allow it.

New statute calls for a report to GA on **dismissals** due to **delays in the analysis of evidence**. Going forward, DAs will send info to Conference of District Attorneys. Conference will compile the report, in coordination with SCL. SCL feels it has sometimes been used as a scapegoat in these situations.

A bill updated list of immediate **precursor chemicals** involved in manufacture of methamphetamine. Another bill updated the Controlled Substances Act. Working group looking at how to keep the list updated more rapidly. Consider having the schedule updated administratively, rather than waiting for the next legislative session. Existing commission can do administrative scheduling; question is whether law-enforcement community will recognize it.

Another bill clarifies the admissibility of reports of forensic and chemical analysis by video or remote testimony. It allows **video testimony** to go forward.

A bill eligible for consideration in the next (“short”) session would allow toxicologists to submit an **affidavit** rather than having to go to District Court for criminal prosecutions. Would save time, allow them to do science work instead of waiting to testify. Defense can object and require the toxicologist to appear. If defendant wants jury trial, case goes to Superior Court where this would not be available.

Board members were asked to see if there’s anything like this in their states and if so, how it works. Remains to be seen what level of impact this could have. Board member Peter Marone expressed skepticism, since defense attorneys would probably routinely require toxicologist to appear. Director: trying to attack the problems raised by Melendez-Diaz ruling on all fronts including this one; this would be one more tool. NMS Labs may have had success with this RE blood-alcohol reports in Pennsylvania.

Wrapping up the legislative update, the crime lab is neutral on Senate Bill 661 which addresses DNA analysis by private labs. Bill is still alive in the upcoming short session. SCL has helped to make sure the language is correct and in compliance with federal rules.

**Western Lab** director Joe Reavis spoke by phone regarding the toxicology section. Processes and equipment are in verification phase. Director Byrd showed photographs from an open house there. AG Cooper helped find funding to get toxicology lab online 2 years ahead of schedule.

New Western Lab, currently under construction, will add biology and toxicology services and serve 36 counties when it comes online. State-of-the-art building, with significant input from staff. Spent a year to design it, and broke ground August 18. Significant press attendance and good coverage about the lab.

Board recessed for lunch at 11:10.

Board meeting resumed at 1:00 PM with swearing-in of Bethany Pridgen administered by Jennifer Councilman, a notary public.

Session began with overview of various administrative operations items. Noncompetitive forensic science pay contributing to attrition rate. About 50% leaving for “better employment”. New salary adjustment fund will help.

Anonymous/voluntary **survey of 28 recently hired forensic scientists**: 82% have student loan debt and 51% of those have loans in excess of \$30,000. Survey results were shared with legislators, helped convince them of the problem.

**Lean Six Sigma update:**

When speaking publically, Director shows slides addressing number of cases that the lab has, and turnaround time. Regarding inventory, 42.5% drop in jobs pending. As number of cases decreases, turnaround time automatically drops; reducing inventory helps reduce turnaround time. Most improvement in body fluid toxicology/blood alcohol, and trace evidence.

In forensic biology, big increase in records completed every month this year, especially July and May. Setting goals, meeting them, and moving forward is a key. About to break the year-end goal, and they haven't even gotten to the end of September yet. Some sections doing better than others with Lean Six Sigma, but all are making progress. Biology, toxicology, and drug chemistry are making most progress.

Forensic biology has been a huge challenge because historically they were not able to keep up with the technology. Got behind from 2008 through 2011. Couldn't keep up in part because of losing analysts to outside jobs. Inventory and turnaround time got very high. Currently 15 people in training, including some for the Western Lab. When new building opens those analysts should already be working cases. Regarding significant improvements, board member Tim Kupferschmid reminded them to celebrate their successes.

Increased awareness/communication about time spent by scientists waiting to testify because of **Melendez-Diaz** ruling. Judges, public defenders and DAs working to get them on the stand and then out the door. Wait time is going down and average testimony time is going up. Can't specifically say that it's tied to MOAs, but it is definitely tied to better communication and awareness. Pretrial conferences help figure out if testimony is really needed. Travel is going to remain constant but the wait and testimony times are changing. Good awareness of Melendez-Diaz at legislative hearings, conferences.

SCL has had on site **accreditation assessments**. ANSI-ASQ National Accreditation Board (ANAB) came in April, and in May reported that continued accreditation was granted. American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) came in August. No official report yet, but there were no findings at any of the three labs.

Regarding **renovations**, in the forensic biology section SCL had room for 8 employees, now have space for 24 people. DNA database had room for 4 employees, now have space for 14 people.

Regarding toxicology **outsourcing**, five batches sent to NMS Labs including cases from 18 counties. 859 cases, of which 606 have been completed. As noted previously, more money is allocated in budget for outsourcing. Using every available dollar to reduce inventory and reduce turnaround time.

Outsourcing is a temporary measure to get SCL out of the hole and "even." Will probably take more than a year, but heading in the right direction although forward momentum could be lost if another employee leaves. Retention is essential.

Retaining toxicologists has been a challenge. Some turnover this year. Toxicology trainees are at various stages in their training. Digital section has lost employees to the banking industry. Hiring/retaining people for DNA has not been as difficult.

Director turned meeting back over to Chairman Channel at end of his report.

Discussion of **meeting schedule**. Chairman says board started meeting quarterly, and then biannually. Discussed meeting schedule with Director during the break. Chairman's opinion and his advice to the Director is that the board continue to meet twice a year face-to-face. Primarily because of rapid pace of change in forensic science. Per the statute that creates the board, they need to look at changes in manuals, and continue to offer advice based on their areas of expertise.

Director asked for a vote he can take to fiscal staffers to show that the board really believes twice-yearly face-to face meetings are needed and should continue.

It was suggested that the electronic meetings mentioned previously should be held between biannual meetings, so members can spend less time getting updated at the face-to-face meetings. Members agreed that a two-hour meeting online, on the "off" quarters between the face-to-face meetings, would save time when the board members come to town.

Board also discussed the possibility of having members stay 2 nights and fly out on the second morning. Director noted there's always concern about getting done in time for everyone to get back to the airport in the afternoon, under the current 1-night system. Also mentioned that informal meetings between board members and staff that are held separate from board meetings are helpful to staff.

Motion was made and seconded to continue with biannual board meetings, and to hold a meeting electronically between each face-to-face meeting. Motion passed.

Motion was made to develop a letter of recommendation from the board to the AG regarding **dual accreditation**. Seconded, and passed. Former Chairman Peter Marone volunteered to lead a drafting committee, and to try to complete the draft by the second week in October for full board review.

**Next board meeting** (electronic) was scheduled for Wednesday, December 2 2015 beginning at 10:00 Eastern Time. Anyone local is invited to come to the meeting room at SCL. Open to the public as all meetings are, and notice of the meeting will be filed officially.

Next face-to-face meeting date was scheduled for February 9, 2016.

It was noted that after adjournment the board would visit the DNA database and Forensic Biology facilities to see the completed renovations, and members would break out into various discipline areas to meet with staff. Prior to adjournment Advisory Board Counsel Matthew Boyatt reminded members not to discuss board issues during the breakouts.

Meeting adjourned at 1:51 PM.